



POLICE DEPARTMENT
NEW YORK, N.Y. 10038
DEPUTY COMMISSIONER—TRIALS

August 25, 2011

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Ramiro Burgarelli
Tax Registry No. 932379
Patrol Borough Manhattan South Task Force
Disciplinary Case No. 86437/10

The above-named member of the Department appeared before me on April 27, 2011, charged with the following:

1. Police Officer Ramiro Burgarelli, while assigned to Patrol Borough Manhattan South Task Force, while on-duty, on or about November 30, 2008, in the vicinity of 647 W. 42nd St., in New York County, did abuse his authority as a member of the New York City Police Department in that said Police Officer did wrongfully stop Mr. Giovanni Castro without sufficient legal authority.

P.G. 212-11, Page 1 STOP AND FRISK

2. Said Police Officer Ramiro Burgarelli, while assigned to Patrol Borough Manhattan South Task Force, on or about November 30, 2008, in the vicinity of 647 W. 42nd St., in New York County, did engage in conduct prejudicial to the good order, efficiency and discipline of the Department in that said Police Officer did abuse his authority as a member of the New York City Police Department by wrongfully issuing a summons to Mr. Giovanni Castro without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 – ABUSE OF AUTHORITY

3. Said Police Officer Ramiro Burgarelli, while assigned to Patrol Borough Manhattan South Task Force, while on-duty, on or about November 30, 2008, in the vicinity of 647 W. 42nd St., in New York County, wrongfully and without just cause was discourteous to Mr. Giovanni Castro: to wit said Police Officer Ramiro Burgarelli used profanity when speaking to Mr. Giovanni Castro.

P.G. 203-09, Page 1, Paragraph 2 – PUBLIC CONTACT

The Department was represented by David Bernstein, Esq., Department Advocate's Office, and Respondent was represented by Craig Hayes, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed¹ that on November 30, 2008, Respondent was on duty performing a 2200 hours to 0635 hours tour of duty in uniform assigned to patrol duties in a marked Department van within the 10 Precinct partnered by Police Officer Villota. At about midnight, Respondent observed a 2003 Mercury Mountaineer ("the SUV") illegally parked on West 42 Street in front of One River Place, Manhattan. As he was standing at the vehicle writing out a ticket for illegal parking, the man who had parked the SUV there approached Respondent. This man was joined by his friend Giovanni Castro who made a comment that included the word "fuck." Respondent grabbed Castro by his collar and then handcuffed him. At 0140 hours, Respondent issued a Summons

¹ The facts contained in this Introduction are based on statements Respondent made during his testimony at this trial, statements he made during his interview at the Civilian Complaint Review Board (CCRB) [Department's Exhibit (DX) 2] and the contemporaneous entry he wrote in his Activity Log (DX 3).

which charged Castro with having committed Disorderly Conduct by acting in a “loud and boisterous manner.” (DX 1)

The Department’s Case

The Department called Giovanni Castro, Robert Riley, Keith Roberts, Michael Roche, and Lieutenant Thomas Feeney as witnesses.

Giovanni Castro

Castro testified that on November 30, 2008, he was bowling at Lucky Strike, a bowling alley located on the southeast corner of West 42 Street at the West Side Highway, Manhattan, along with Robert Riley, Keith Roberts and Michael Roche. Castro asserted that they did not drink any alcohol while they were bowling. After they finished bowling, they went outside and decided to foot race each other to the location where Roberts’ SUV was parked, which was on the south side of 42 Street in front of One River Place. They agreed that the foot race would start at Lucky Strike and that the finish line would be where Roberts’ SUV was parked, which was a distance of about 100 yards.

They all started running toward Roberts’ SUV. As Castro approached Roberts’ SUV, he saw a police van and a uniformed male police officer standing in front of Roberts’ parked SUV. When Castro saw that Respondent was writing out a parking ticket, he pleaded, “Officer, please don’t give us a ticket.” Respondent replied, “I’m giving you a fucking ticket.” Castro testified that he placed his hand on the hood of the SUV but he did not slam his hand on the SUV’s hood and he did not jump up onto the hood.

As Castro started to walk away from Roberts' SUV, he said to no one in particular, "Well, fuck me then." Respondent asked Castro, "What did you say to me?" Respondent then tackled Castro onto the ground, lifted him up and pinned him up against a wall and then handcuffed him.

Castro testified that he retained an attorney and filed a civil suit against Respondent. This civil action was settled and Castro received \$12,900.

On cross-examination, Castro testified that he assumed that Roberts had parked his SUV illegally because Respondent issued him a parking ticket. Castro confirmed that he never asked Roberts why he had parked his SUV illegally. Castro confirmed that a few cars had passed by while he was interacting with Respondent. Castro acknowledged that he should not have said, "Well, fuck me then" in Respondent's presence and that by using profanity he was being disrespectful to a police officer. Castro admitted that when he said, "Well, fuck me then," he wanted Respondent to hear this comment because he was responding to Respondent's "I'm giving you a fucking ticket" comment which was a rejection of Castro's plea not to issue a parking ticket.

Robert Riley

Riley recalled that he won the foot race which started at Lucky Strike and finished where Roberts' SUV was parked. After he reached the spot where Roberts' SUV was parked, he stopped running and then walked about 25 feet past the SUV. He turned around and looked back toward the SUV when he heard a male voice exclaim, "Get the fuck back here! Turn the fuck around when I'm talking to you!" Seconds later, he saw a uniformed male police officer tackle Castro to the ground from behind. The police

officer then handcuffed Castro. Michael Roche walked toward the officer, who was holding a can of pepper spray at his side. The officer did not immediately point the can of pepper spray at Roche. The officer delayed 15 seconds before he pointed the can of pepper spray at Roche and sprayed him. Riley testified that the officer did not discharge pepper spray at him.

On redirect examination, Riley testified that he and Castro are no longer friends “because of things he has said about me.”

Keith Roberts

Roberts testified that on November 30, 2008, when he arrived at Lucky Strike, he parked his SUV on West 42nd Street. When he and his friends raced back to where his SUV was parked, he saw a uniformed male police officer standing in front of his SUV writing out a parking ticket. Roberts testified that he asked the officer if he could move his SUV to avoid getting a ticket. As he was speaking to the officer, Castro “interrupted” their conversation. Castro ran up to the SUV, “hugged” the SUV and pleaded with the officer not to issue a parking ticket. The officer told Roberts that he was still getting “a fucking ticket.” After the officer said this, Roberts and Castro started to walk away from the SUV. Roberts recalled that he threw his arms up in the air and said “something” like “this is BS” or “this isn’t fair.” Roberts heard Castro say, “Well, fuck me.” The officer then exclaimed, “Hey! Hey!” The officer began striding toward Castro, “bowled him over” onto the ground, dragged him about 15 to 20 feet and handcuffed him. Roberts heard Roche say, “I’m calling 911.” Roberts testified that he has not filed any civil suit regarding this incident.

On cross-examination, Roberts testified that when Castro ran up to the SUV and “hugged” it, he heard Castro’s body make contact with the SUV. Roberts denied that Castro had climbed up onto the SUV’s hood. Roberts testified that when he said something to the effect of “this is BS,” he was close enough to the officer and he said it loud enough that the officer must have heard his remark.

Michael Roche

Roche, who is 30 years old and has never been arrested, testified that when he arrived at the SUV, he saw Roberts and Castro standing by the SUV speaking to a police officer. After Castro made a “fuck me” remark, turned his back on the officer and started walking away, the officer exclaimed, “Get the fuck back over here! What the fuck do you think you’re doing?” When Castro did not turn around, the officer “charged” at Castro, grabbed him from behind and threw him to the ground. When Roche walked toward the officer and Castro, the officer sprayed pepper spray at Roche. Roche testified that he has not filed any civil suit regarding this incident.

On cross-examination, Roche testified that when he saw Roberts and Castro standing by the SUV speaking to the officer, he could not hear their conversation.

Lieutenant Thomas Feeney

Feeney testified that on November 30, 2008, he was on duty assigned to Patrol Borough Manhattan South Task Force (MSTF) as Commanding Officer for the First Platoon. He recalled that the patrol sergeant requested that he respond to a location on 42 Street where Respondent had a male in custody. Upon arriving at the scene, Feeney had

a conversation with Respondent who told him that the male in custody had committed Disorderly Conduct in that he had “jumped on top of a car,” and was “yelling” and “causing a scene.” Based on what Respondent told him, Feeney authorized Respondent to issue the male a Summons for Disorderly Conduct (DX 1).

Respondent's Case

Respondent testified in his own behalf.

Respondent

Respondent testified that as he was standing next to the SUV writing out a ticket for illegal parking, two males approached the SUV and asked him not to issue the ticket. Castro jumped up onto the hood of the SUV and began yelling. When he told them that he had to issue the ticket because he was almost finished writing it out, Castro told him either “Go fuck yourself” or “Fuck you” and started to walk away. When Respondent was asked if Castro had said, “Well, fuck me then,” Respondent answered, “I don’t recall.” Respondent testified that as Castro was walking away from him, he called out “Hey! Stop!” Castro did not stop or turn around. Rather, he continued walking away. Respondent grabbed Castro by his collar, asked him to stand up against a wall and then handcuffed him. When Respondent was asked whether he had cursed during this incident, Respondent answered that he had no recollection that he had used any profanity.

Respondent testified that he forcibly stopped Castro, and then handcuffed him, because Castro was non-cooperative and because Respondent wanted to search him “to get some ID.” Respondent explained that he “already had a Dis Con” because Castro had

jumped up onto the hood of the SUV and had been acting in a loud and boisterous manner.

On cross-examination, Respondent testified that when Castro jumped up onto the hood of the SUV he made a “snickering” sound and that he “seemed to be intoxicated, making light of the situation, maybe making fun of his friends for getting a ticket.” Respondent agreed that when he heard Castro say either “Go fuck yourself” or “Fuck you,” Castro was not intending for anyone passing by them to hear his remark. Respondent testified that although he had no recollection of doing so, he may have used profanity when he called out to Castro to stop.

FINDINGS AND ANALYSIS

Initially, I find that Giovanni Castro was not a credible witness because his claim that he merely placed a hand on the SUV, and that he did not slam his hand on the SUV or slam his body against the SUV, is inconsistent with Keith Roberts’ testimony that he heard Castro’s body make contact with the SUV. However, I do find that Roberts was a believable witness and I credit his claims that Respondent told him that he was getting a “fucking ticket” and that Castro never jumped up onto the hood of the SUV. Roberts’ testimony has the ring of truth because he candidly admitted that after Respondent rejected his request that he be allowed to avoid a ticket by moving his SUV to a legal parking spot, he threw his arms up in the air and said “something” to the effect of “this is BS.” Based on Roberts’ testimony, I reject Respondent’s claim that Castro jumped up onto the hood of Roberts’ SUV.

With regard to the charges under Specification Nos. 1 and 2 that Respondent abused his authority by wrongfully stopping Castro and by wrongfully issuing a summons to Castro without sufficient legal authority, I find Respondent Guilty based on Roberts' testimony and based on the statements Respondent made during his CCRB interview (DX 2) where Respondent failed to articulate a valid legal basis which justified either his forcible stop of Castro or his action of issuing a summons to Castro for Disorderly Conduct (DX 1).

At his CCRB interview, Respondent stated that he had forcibly stopped Castro by grabbing the back of Castro's shirt collar only because he believed that he had heard Castro yell "fuck you" as Castro was walking away from Respondent, and that he had immediately handcuffed Castro because Castro refused to take his hands out of his pockets or produce ID (DX 2 pages 4-5). Since Respondent articulated no actions on Castro's part that would lead Respondent to conclude that Castro was possibly involved in criminal activity, Respondent forcibly stopped Castro without possessing the requisite reasonable suspicion to do so.

With regard to the Summons that Respondent issued to Castro for Disorderly Conduct, Lieutenant Thomas Feeney testified credibly that when he arrived at the scene that night, Respondent told him that he had arrested Castro for Disorderly Conduct because he had jumped up on the hood of the SUV. However, Respondent only wrote on the summons that Castro had acted in a "loud and boisterous manner." (DX 1) He did not write that Castro had jumped up on the hood of a car. Also, Respondent checked the "VTL" box on the Summons when he should have checked the "Penal Law" box. I also find it significant that at his CCRB interview when Respondent initially described his

entire interaction with Castro, he did not mention that Castro had jumped up on to the hood of the SUV as the basis for arresting Castro for Disorderly Conduct (DX 2 pages 4-5). He only asserted that Castro had jumped on the hood of the SUV after he was asked if Castro had approached the SUV (DX 2 page 6).

All of the above supports the Department's contention that Respondent did not issue this Summons because he truly believed that Castro had committed the offense of Disorderly Conduct, but, rather, he issued it to get back at Castro for his casual "fuck" remark regarding the parking ticket Respondent had issued. The Department's contention is further supported by the fact that, in his testimony at this trial, Respondent acknowledged that he did not immediately arrest Castro for Disorderly Conduct at the point in time that Castro supposedly jumped up on the hood of the SUV. Rather, Respondent admitted that he arrested Castro only after Castro had uttered the word "fuck" as he was walking away from the SUV. Also, in the contemporaneous entry he made in his Activity Log (DX 3), Respondent wrote that in addition to "Discon" Castro had committed "OGA" (Obstructing Governmental Administration), yet Respondent did not include a charge of Obstructing Governmental Administration on the Summons he issued to Castro.

Finally, on the Summons he prepared, during his CCRB interview, and during his testimony at this trial regarding how Castro had committed the offense of Disorderly Conduct, Respondent ignored the "public inconvenience" element of the offense of Disorderly Conduct.

With regard to the charge under Specification No. 3 that Respondent was discourteous in that he used profanity, I find Respondent Guilty based on Roberts'

credible testimony that after he and Castro had pleaded with Respondent not to issue a parking ticket, Respondent stated that he was still getting a “fucking ticket.” Since Respondent had complete control of the situation at that point in time, his use of profanity had no purpose, was unnecessary and, therefore, was purely gratuitous. Even if Respondent found Roberts’ and Castro’s pleas annoying, he had no right to use profanity.

Respondent is found Guilty.

PENALTY

In order to determine an appropriate penalty, Respondent’s service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y. 2d 222 (1974). Respondent was appointed to the Department on July 1, 2003. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Advocate recommended that the Respondent forfeit eight vacation days.

In Disciplinary Case Nos. 85014/09 & 85653/09, signed on October 21, 2010, a four-year police officer with no prior disciplinary record pleaded *Nolo Contendere* and forfeited ten vacation days for making two unjustified stops. During one of these stops, the officer uttered a discourteous remark which included a profane word.

In Disciplinary Case No. 85857/09, signed on October 21, 2010, a 20-year police officer with one prior disciplinary adjudication forfeited eight vacation days after he pleaded guilty to having stopped a civilian without requisite reasonable suspicion to do so. The officer also failed to record the stop in his Activity Log.

Having examined the facts and circumstances surrounding the Respondent's misconduct, I recommend that the Respondent forfeit ten vacation days.

Respectfully submitted,

R. VINAL
by M. Kelly

Robert W. Vinal
Assistant Deputy Commissioner - Trials


APPROVED
JAN 05 2012
Raymond W. Kelly
RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER RAMIRO BURGARELLI
TAX REGISTRY NO. 932379
DISCIPLINARY CASE NO. 86437/10

Respondent received an overall rating of 3.0 on his 2010 performance evaluation, 3.5 on his 2009 evaluation, and 3.5 on his 2008 evaluation. He has no medals. [REDACTED]. He has no prior disciplinary record or monitoring records.

For your consideration.

R. VINAL

Robert W. Vinal

Assistant Deputy Commissioner – Trials